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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,892	06/29/2001	Kay Lichtenwalter	1094560-3	3390
759	90 05/10/2005		EXAM	INER
AGILENT TE	CHNOLOGIES, INC.		CHIN, CHRIS	STOPHER L
Legal Departme	nt, DL429			
Intellectual Property Administration			ART UNIT	PAPER NUMBER
P.O. Box 7599			1641	
Loveland, CO	80537-0599		DATE MAILED: 05/10/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estations of time may be available under the procision of 3 CFR 1.13(d). In no event, however, may a reply be timely filed Estations of time may be available under the procision of 3 CFR 1.13(d). In no event, however, may a reply be timely filed If the period for reply specified above is less show thing (30) days, a reply within the statutory minimum of thing (50) days will be considered timely. If the period for reply specified above is less show thing (30) days, a reply within the statutory minimum of the mailing date of this communication. False to reply within the set or extended period for reply will, by a date, cause the application to become ARANGONED (35 U.S. C, § 113.) Responsive to communication(s) filed on 31 January 2005. Status 1) Responsive to communication (s) filed on 31 January 2005. 2a This action is FINAL. 2b) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 38 and 43-50 is/are pending in the application. 4a) Of the above claim(s) 5g is/are withdrawn from consideration. 5 Claim(s) 38.43-45 and 47-49 is/are rejected. 7) Claim(s) 38 43-45 and 47-49 is/are rejected. 7) Claim(s) 38 and 43-50 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. Application Papers 9) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) Application Papers 9) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 3) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 3) Acknowledgment is made of a claim for foreign priority documents have been rece			Application No.	Applicant(s)				
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DETAILED ACTION

Election/Restrictions

1. Applicant's election of species DNA in the reply filed on 1/31/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim 50 is withdrawn as being directed to a non-elected claim.

Specification

- 2. The disclosure is objected to because of the following informalities:
 - a.) The status of the parent application cited on page 1 of the specification should be updated.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 4. Claims 38 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Brennan.

Brennan (US Patent 5,474,796) discloses an array plate. Solutions of chemical reactants are added to functionalized binding sites on the plate surface by means of a piezoelectric pump. The pump deposits microdroplets of chemical reactant solution onto the binding sites. The chemical reactant at each binding site is separated from the others by surface tension. Typically, the plate has 10-10⁴ functionalized binding sites per cm² and each functionalized binding site is about 50-2000 microns in diameter. Typically, the amounts of reagents added to each binding site is in a volume of about 50 picoliter to 2 microliter. The reactions of the functionalized binding site may form covalent bonds such as esters or amide bonds or may involve non-covalent specific binding reactions, such as antibody/antigen binding or oligonucleotide specific binding (col. 2, lines 11-28). The plate is composed of glass (col. 3, lines 25-27, and col. 5, lines 11-30). Oligonucleotides can be applied to the binding sites as droplets from a piezoelectric pump.

With respect to the limitation in claim 38 of each spot having a different concentration of immobilized oligonucleotide, Brennan teaches that typically the droplets of oligonucleotides will not vary in size by more than 5% (col. 6, lines 18-64). The variability in droplet size will result in variability in concentration of oligonucleotide in each droplet and each binding site will have a different concentration of oligonucleotide. Example 2 of Brennan in column 7 also teaches a variable concentration of oligonucleotide in each binding site (see specifically lines 61-67 of col. 7).

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5. Claims 38, 45, 47, 48, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Stavrianopoulos et al.

Stavrianopoulos et al (US Patent 4,994,373) discloses an assay plate in Example 1 comprising a glass plate provided with an array of depressions or wells treated with functional groups, such as silanes. Denatured single-stranded DNA sequences from samples are fixed in each of the depressions or wells. Polynucleotide probes labeled with a chemical label hybridize to complementary single-stranded DNA sequences in each of the depressions or wells. The chemical label can be an enzyme or fluorophore (col. 8, lines 10-56, and col. 6, lines 9-26).

With respect to the limitation in claim 38 of each spot having a different concentration of immobilized oligonucleotide, each depression or well in the assay plate of Stavrianopoulos et al contains an unknown amount of analyte denatured single-stranded DNA and thus meets this limitation.

Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 7. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan in view of Brown et al.

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See above for the teachings of Brennan.

Brennan differs from the instant invention in failing to teach drying the oligonucleotides immobilized in the binding sites.

Brown et al (US Patent 5,807,522) discloses a method of making a microarray where the analyte specific reagent in each binding site of the microarray is dried after its application. The drying can be done by heating or under vacuum (col. 9, lines 30-45). The analyte specific reagent can be nucleic acids (col. 6, lines 7-10).

[While Brown et al has a filing date of June 7, 1995, the teaching of Brown et al relied upon in this rejection has priority to the parent application which was filed on June 17, 1994.]

It would have been obvious to one of ordinary skill in the art to dry the binding sites of Brennan as taught by Brown et al because the excess liquid in each droplet applied to the binding sites containing the oligonucleotides need to removed prior to storage and/or use of the microarray.

8. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan in view of Eriksson.

See above for the teachings of Brennan.

Brennan differs from the instant invention in failing to teach storing the microarray in a waterproof storage container.

Eriksson (US Patent 3,642,450) discloses a waterproof envelope for holding a test strip.

It would have been obvious to one of ordinary skill in the art to enclose the microarray of Brennan in the waterproof envelope of Eriksson because the waterproof envelope of Eriksson provides the advantage of protecting the reagents on the microarray from contaminants.

Allowable Subject Matter

9. Claim 46 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher L. Chin whose telephone number is (571) 272-0815. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

> Christopher L. Chin Primary Examiner

Christyle L. Chin

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5/7/05